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Supreme Court of the United States

———Term, 1951

No. 610

JULIA PETTIFORD, PETITIONER,

versus

SOUTH CAROLINA STATE BOARD OF EDUCATION,
RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

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The petitioner, Julia Pettiford, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of South Carolina entered in the above entitled case on December 15, 1950, depriving her of her license to teach in the colored schools of South Carolina. Petitioner feels that all of the matters involved in this petition are fully discused herein and that a brief in addition hereto would be mere surplusage.

OPINIONS BELOW

The decision of the South Carolina State Board of Education (R. 92) is unreported. The Order of the Court of Common Pleas of Richland County (R. 103-130) is unreported. The decision of the Supreme Court of South Carolina, rendered December 15, 1950 is reported in 218 S. C. _____, 62 S. E. (2d) 780, and in the Transcript of Record of this Case at page 152.

JURISDICTION

The judgment of the Supreme Court of South Carolina was entered on December 15, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1257, (3).

The petitioner, a negro school teacher, requests this Court to take jurisdiction of this case because she has been deprived of her property without due process of law contrary to Amendment 14, Section 1, of the United States Constitution, in that her license to teach in the colored public schools of South Carolina has been taken away without due process of law.

The first exception pressed by petitioner is that there was not sufficient evidence, as a matter of law, against her upon which to base a revocation of her license. The petitioner first urged this point by argument when the case was originally heard before two members of the State Board of Education. (R. p. 73-74, 88-89) This point was overruled by the Board and petitioner's license revoked. This error was next raised by petitioner in her petition for writ of certiorari argued before the Richland County Court of Common Pleas. The petition for certiorari to the State Board of Education was granted but the point of error was overruled. (R. p. 99, 100) This error was further pressed before the Supreme Court of South Carolina upon an as-

signment of error on appeal. (R. p. 143) The Supreme Court of South Carolina overruled the assignment of errors and affirmed the Court of Common Pleas.

The next point of error raised by petitioner is that the South Carolina State Board of Education did not follow the South Carolina laws, section 5280, Code of 1942, in revoking petitioner's license to teach. This statute provides that whenever the State Board of Education conducts business a majority of the Board shall constitute a quorum to transact the business.

"Sec. 5280, Meetings. The Board shall meet on the call of its chairman, or upon the request of a majority of its members . . . A majority of the board shall constitute a quorum for transacting business."

There are nine members on the board and therefore five members constitute a quorum for transacting business. The board conducted this case before only two of its members and thereby deprived the petitioner of her license to teach without due process of law. This exception was first raised, at the time that the hearing took place, before the two members of the board. These members overruled the exception. (R. p. 53) This error was next raised in a petition for a writ of certiorari directed to the board of education and heard before the Richland County Court of Common Pleas. (R. p. 99) The Richland County Court of Common Pleas affirmed the action of the board of education in conducting the hearing before two of its members instead of before a quorum. (R. p. 121-127) This error was next raised before the Supreme Court of South Carolina in an assignment of errors upon appeal from the action of the Court of Common Pleas. (R. p. 144, 145, 147, 148, 149) That Court affirmed the Court of Common Pleas, adopting

its order as the order of the Supreme Court of South Carolina. (R. p. 152), 218 S. C.----, 62 S. E. (2d) 780.

The next error urged by petitioner is that she was deprived of her license to teach school without due process of law, in that Section 5282 of the South Carolina Code, 1942, provides the grounds upon which a teacher may be deprived of her license to teach:

"The State board of education shall have power: (4) to grant state teachers certificates and to revoke them for immoral or unprofessional conduct, profanity or evident unfitnesss for teaching."

And the petitioner alleges that her license to teach was revoked simply "for good and sufficient cause" (R. p. 92), which is not a ground upon which the State Board of Education had the right to revoke her license. This error was first raised before the Richland County Court of Common Pleas. (R. p. 99-100) The Court of Common Pleas overruled this objection of the petitioner. (R. P. 127-128) The petitioner raised this objection again before the Supreme Court of South Carolina, alleging that by failing to follow the statute law of South Carolina and by revoking her license for a reason not provided for in the statute, the board of education had deprived the petitioner of her license to teach in South Carolina without due process of law, contrary to the Fourteenth Amendment of the United States Constitution. (R. p. 145, 150) The Supreme Court of South Carolina overruled this objection without comment on its part by simply odopting the order of the Court of Common Pleas as its order. (R. p. 152), 218 S. C. ---, 62 S. E. (2d) 780.

QUESTIONS PRESENTED

1. Whether or not the South Carolina State Board of Education had sufficient evidence on which to revoke the petitioner's license to teach in the colored schools of South Carolina, and whether or not such revocation, based upon such insufficient evidence was not a taking of petitioner's property without due process of law?

2. Whether or not the hearing of petitioner's case before two members of the South Carolina Board of Education, instead of before a quorum of five members, and the revocation of petitioner's license to teach based on this hearing was a taking of the petitioner's property without due process of law, being in contravention of Section 5280 of the South Carolina Code, 1942 and the United States Constitution?

3. Whether or not the revocation of petitioner's license to teach based upon a hearing before two of the members of the S. C. Board of Education, was not a taking of the petitioner's property without due process of law, because the revocation of this license by this board of two members was a delegation of a non delegable power and therefore a denial of due process of law as provided for in the Fourteenth Amendment to the United States Constitution?

4. Whether or not the revocation of petitioner's license to teach deprived her of her property without due process of law in contravention of the Fourteenth Amendment to the United States Constitution in that the State Board of Education revoked petitioner's license to teach on the basis of an insufficient, incomplete, inaccurate and erroneous report to the State Board of Education by the members of the Board who improperly heard the entire case?

5. Whether or not petitioner was deprived of her property without due process of law contrary to the Fourteenth Amendment of the United States Constitution by the State Board of Education revoking her license to teach "for good and sufficient cause" when that was beyond the statutory power of the Board as set forth in Section 5282 of the South Carolina Code, 1942.

STATUTES INVOLVED

In order to determine whether or not the Supreme Court of South Carolina, the Richland County Court of Common Pleas, and the South Carolina State Board of Education acted illegally in revoking the petitioner's license to teach in the colored school system of South Carolina, it is necessary to consider the following statutes;

(a) Section 5280, S. C. Code 1942:

"The said board shall meet on the call of its chairman, or upon the request of a majority of its members, at the office of the state superintendent of education, or at such other place as may be designated in the call. A majority of the board shall constitute a quorum for transacting business. The official seal of the state superintendent of education shall be used for the authentication of the acts of the state board. The members of the state board of education appointed by the Governor shall receive as compensation four dollars per diem and mileage as is provided for members of the General Assembly, not exceediing twenty days in any one year."

(b) Section 5282, S. C. Code 1942:

"The State board of education shall have power: . . . (4) to grant state teachers certificates and to revoke them for immoral or unprofessional conduct, profanity or evident unfitness for teaching."

STATEMENT

The appellant, a negro resident of Richland County, South Carolina, was a teacher under the Department of Education, holding a teaching certificate in the elementary field for the period July 1, 1947 to June 30, 1954, and teaching in a colored school, the Howard Junior High School in Newberry County. On February 19, 1949, the South Carolina State Board of Education (hereafter referred to as the Board), gave an examination to all of the South Carolina school teachers who desired to take it. Appellant took this examination at Carver School in Columbia. (R. p. 80-81) On August 17, 1949, the appellant was served with a Rule to Show Cause, directing her to appear before the Board on August 24, 1949, to show cause why her State Teacher's Certificate should not be revoked for immoral or unprofessional conduct and/or evident unfitness for teaching, because the appellant obtained and used information on the examination on February 19, 1949, with the intent and purpose of cheating to get a higher grade and a higher classification than she was entitled to and to cheat and defraud the State of South Caroliina, its taxpayers and certain of its school children. At the hearing on this Rule, the appellant pleaded not guilty to the charges against her. (R. p. 3-4)

When the examination was given, there was one proctor for every thirty examinees and also room examiners in each room. The examinees were seated and spaced so as to keep any possibility of aiding one another at a minimum. (R. p. 32-33) The proctors and room examiners were warned that certain examinees had unlawful aids that they would use to help themselves in the eximination. The room examiners and proctors were particularly alert to look for persons using unlawful answers. (R. p. 16) This examination was given at a number of places simultaneously in

South Carolina. (R. p. 10, 16) In the course of the examination given at Yemassee, S. C., 82 miles from Columbia, S. C., an answer sheet, prepared ahead of time, was taken from one of the examinees. (R. p. 8-9) During the examination given at Booker-Washington High School in Columbia, S. C. two miles from Carver High School, two of the examinees were seen using an illicit aid on the examination and these were taken from them. (R. p. 14-15) During the examination four other persons were seen using illegal aids. These four aids were taken from the teachers using them and were introduced in evidence in the hearing in this case. It was stipulated by the prosecuting attorney that none of these aids were taken from the appellant and that none of the proctors who took these aids from the examinees saw the appellant using any fraudulent material during the examination. (R. p. 17-18, 22-23) It was never shown throughout the entire case that any material was taken from the place where the appellant took the examination, or that anyone who took the examination at this School was seen to use any illegal aid. No witness stated that they saw the appellant use any fraudulent aid on this examination or that they took any fraudulent aid from the appellant. There was no evidence that the appellant had any connection with any of the material that was taken from other examinees. (R. p. 10, 12, 16, 17-18, 32, 51)

After these seven papers were taken from examinees all over the state of South Carolina, they were sent to the Educational Testing Service in Princeton, N. J. The examination had eleven parts and some of these papers covered some of these parts and some covered other parts. In some instances the papers covered the same parts of the examination. The Educational Testing Service of Princeton, N. J., took all of these illegal papers and made one large composit answer sheet from all of them. (R. p. 43-45)

In about five (5%) per cent. of the answers the different illegal answer sheets answered the same question in a different way. (R. p. 51) In such a case, the answer used in the composit fraudulent answer sheet was the answer given by most of the confiscated papers. When this Master Answer sheet was made it was compared with the appellant's answer sheet and because the two were *similar* the appellant was accused of cheating with an intent to defraud the State of South Carolina, its taxpayers and certain of its school children.

These examinations were multiple choice type of question and answer examinations. Each question had several answers to it. The examinee chose the answer that she thought was correct and marked a corresponding number with a pencil. It was admitted by three of the witnessses for the State Board of Education that it was possible for two persons who had absolutely no connection with each other, in answering the questions, to have answer sheets that were markedly similar, or even identical. (R. p. 34-35, 25, 51) The appellant swore that she did not have or use any fraudulent or illegal material on the exam, that she was not offered any illegal material, did not see anyone else using illegal material and did not receive any illegal information off of any one else's paper, that she did not cheat during the examination and was not accused of cheating during the examination. (R. p. 80-85)

The case was first tried before two members of the state board of education on August 24, 1949. The trial before two members of the board was objected to by attorney for petitioner but this objection was overruled. (R. p. 53-55) Subsequently, without further hearing or notice of any kind, the board of education wrote petitioner a letter informing her that her license to teach had been revoked "for good and sufficient cause." (R. P. 92) The petitioner then

went before the Richland County Court of Common Pleas on a writ of certiorari to have the action of the board of education reversed. By an order dated December 13, 1949, the action of the board of education was affirmed. (R. p. 103-130). From this order the petitioner appealed to the Supreme Court of South Carolina and it rendered a decision on December 15, 1950 affirming the Richland County Court of Common Pleas. (R. p. 152) 218 S. C. ---, 62 S. E. (2d) 780. This was not a full original opinion. For the most part the Supreme Court adopted the Order of the lower Court.

REASONS FOR GRANTING THE WRIT

1. The entire record in this case is absolutely devoid of any evidence to sustain a finding that petitioner obtained and used information on the examination on February 19, 1949, with the intent and purpose of cheating to get a higher grade and a higher classification than she was entitled to and to cheat and defraud the State of South Carolina, its taxpayers and certain of its school children. This charge, made against petitioner, is entirely unsupported by the evidence. The only evidence against the petitioner was that her examination answers were similar to answers taken from other teachers who were from two to eighty-two miles from petitioner when the examination was given. (R. p. 10, 12, 16, 17-18, 32, 51) The petitioner denied categorically that she used any fraudulent material on this exam, that she saw any used or was offered any. (R. p. 80-85) Not a single witnesss would swear that petitioner used any fraudulent material on the examination. The proctors and room examiners did not testify at all. No connection of any kind was shown between appellant and anyone who cheated on the exam. It was testified to by witnesses for the board that two examinees could have similar or even identical exam

papers without any connection between them. (R. p. 34-35, 25, 51)

There was no evidence to support the action of the board of education. Therefore, the revocation of petitioner's license to teach was in direct conflict with the decisions, of this Honorable Court, holding that administrative boards cannot act unless their acts are supported by the evidence in the case and a finding or decision without support in the evidence is beyond the power of administrative authorities, is arbitrary, a denial of due process of law and void. In *Interstate Commerce Commission v. Louisville and N. R. Co.* 227 U. S. 88, 57 L. ed. 431, 33 S. Ct. 185, it was held that the Interstate Commerce Commission was obliged to have some substantial evidence to support its findings. The Court said this:

"But the statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless."

To the same effect are many other decisions of this Court. *Baltimore and O. R. Co. v. United States,* 264 U. S. 258, 68 L. ed. 667, 44 S. Ct. 317. *United States v. Abilene and S. R. Co.,* 265 U. S. 274, 68 L. ed. 1016, 44 S. Ct. 565. *Tagg Bros. and Moorhead v. United States,* 280 U. S. 420, 74 L. ed. 524, 50 S. Ct. 220. *Morgan v. United States,* 298 U. S. 468, 80 L. ed. 1288, 56 S. Ct. 906; 304 U. S. 1, 82 L. ed. 1129, 58 S. Ct. 773.

From these facts and these cases it can be seen that the petitioner has been deprived of her license to teach school by the board of education, without due process of law and in contravention of the Fourteenth Amendment to the United States Constitution. This case is one of grave public

concern affecting every school teacher in the State of South Carolina. The board of education and the South Carolina Supreme Court have usurped dictatorial powers over the South Carolina School teachers. This decision is directly opposed to the decisions of the Supreme Court of the United States.

2. The Supreme Court of South Carolina, in affirming the action of the board of education, decided a federal question in direct opposition to the way it would have been decided by the Supreme Court of the United States. Section 5280 of the South Carolina Code, 1942 provides that before the board of education can transact business it must have a quorum present. The most important business handled by the board of education is passing on the issuance and revocation of licenses to teach. There are nine members to the board and a quorum would be five. *S. C. Code, 1942, Sec. 5279.* In the instant case the entire hearing was held before two members of the board and petitioner's license to teach was revoked without any hearing before a quorum. This proceeding deprived petitioner of her license to teach, without due process of law. The decisions of this Court hold that such a proceeding is unconstitutional and void. The board of education acted in a quasi-judicial capacity in a matter that is in its nature criminal. The petitioner was entitled to have the judges in the case see and hear her and her witnesses. In the case of *Morgan v. United States,* 298 U. S. 468, 80 L. ed. 1288, 56 S. Ct. 906, the Secretary of Agriculture had the duty to determine the maximum rates to be charged by market agencies for buying and selling livestock at the Kansas City stockyards. The appellant alleged that the order was made without the Secretary of Agriculture having read any of the evidence or having heard the oral arguments or having read appellants briefs. The Circuit Court of Appeals struck these allega-

tions from the appellant's pleadings. On appeal the U. S. Supreme Court directed that the allegations be put back in the pleadings. The Court said that the weight ascribed to the findings in the case rests upon the assumption that the officer who makes the findings has addressed himself to the evidence and upon that evidence has conscientiously reached the conclusions which he deems it to justify. "That duty cannot be performed by one who has not considered evidence or argument. It is not an impersonal obligation. It is a duty akin to that of a judge. The one who decides must hear * * * And to give the substance of a hearing which is for the purpose of making determinations upon evidence the officer who makes the determinations must consider and appraise the evidence that justifies them. That duty undoubtedly may be an onerous one, but the performance of it in a substantial manner is inseparable from the exercise of the important authority conferred."

This case was again appealed to the Supreme Court of the United States and was again reversed. *Morgan v. U. S.*, 304 U. S. 1, 58 S. Ct. 773, 82 L. Ed. 1129. The Court said,

"The maintenance of proper standards on the part of administrative agencies in the performance of their quasi-judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of their appropriate authority. On the contrary, it is in their manifest interest. For, as we said at the outset, if these multiplying agencies deemed to be necessary in our complex society are to serve the purposes for which they are created and endowed with vast powers, they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play."

The conflict between these cases and the decision herein complained of is plain. The importance of this case to

all of the public school teachers in South Carolina, white and colored, is tremendous. If the board of education can pass on this teachers case by delegating its duties to two of its members instead of having a hearing as provided for by statute then it can delegate those duties to anyone of its choice. This is a proper case for this Court to take jurisdiction of upon certiorari.

3. The board of education revoked petitioner's license to teach "for good and sufficient cause." (R. p. 92) Section 5282 of the S. C. Code, 1942, sets forth specifically the reasons for which the board of education can revoke a teacher's license. These reasons are, immoral or unprofessional conduct, profanity or evident unfitness for teaching. By its action the board of education has taken broad powers far beyond anything given it by this statute. If the board of education can revoke petitioner's license for this reason, it can revoke any other teacher's license for any reason it chooses and assign as the reason for doing so: "good and sufficient cause." A teacher's license could be revoked because the board did not like the color of his hair or his eyes or his skin, or the political party to which he belonged. The fact that the board of education affords the petitioner a hearing is no excuse for revoking the petitioner's license for a cause not permitted by the statute. This statute was passed to limit the board's power and, in this case, the board of education has taken unto itself powers far beyond anything in the statute. To revoke petitioner's license "for good and sufficient cause" was to deprive petitioner of her property without due process of law. In *State of Indiana ex rel Anderson v. Brand,* 303 U. S. 95, 58 S. Ct. 443, 82 L. Ed. 685, 113 A. L. R. 1482, this Court decided that a teacher's contract to teach was a contract within the provisions of Article 1, Section 10 of the United States Constitution. In that case a statute set forth the causes for which a teachers

license could be revoked. The State sought to repeal the statute and then to revoke the appellant's license for a reason that did not appear in the statute. The Court held that to do so was the impairment of a contract in violation of the United States Constitution. The appellant, Anderson, had a contract with the State that the state legislature could not abrogate. The only way that that contract could be cancelled by the State was in accordance with the statutory provisions controlling that procedure. In the case at hand, petitioner had a valid subsisting contract with the State and the board of education could not cancel her certificate to teach except in accordance with the statute.

In 47 Am. Jur., Schools, Sec. 110, p. 374, we find the following stated:

"While one accepting a license to teach school cannot usually resort to the Courts to prevent its revocation on statutory grounds by the proper school officers, where the statute specifies the grounds on which a license may be revoked the Courts will protect a teacher against a revocation on grounds not included in the statute."

The statute here in question certainly does not give the board the right to revoke appellant's license "for good and sufficient cause."

In 45 Am. Jur. Schools, Sec. 125, p. 386, we find the following statement:

"Every contract made with a teacher includes by implication any statutory provisions for dismissal, and in the absence of statutory provisions, includes the implied power of the board to dismiss for adequate cause. Conversely, statutory terms favorable to the teacher are likewise written into the contract of employment and cannot be circumvented by any act of the school board.

"Proceedings for the dismissal of a teacher are frequently regulated by statute, and consequently depend on the wording of the particular statute in force. In such statutes, although the grounds of dismissal are generally stated in the broadest of terms, the board is limited to the grounds specified.

School v. Indiana ex rel. Griffin et al., 203 Ind. 626, 180 N. E. 471;

Kennedy v. San Francisco Bd. of Education (1890), 82 Cal. 483, 22 P. 1042;

Butcher v. Charles (1895), 95 Tenn. 532, 32 S. W. 631;

Saxton v. Los Angeles Board (1929), 206 Cal. 758, 276 P. 998;

Dutart v. Woodward (1929), 99 Cal. App. 736, 279 P. 493;

Goff v. School District, 154 P. Super. 239, 35 A. (2d) 900;

State ex rel. Penny v. Rapides Parish School Bd. (La.), 1 So. (2d) 334;

Knox County et al. v. State ex rel. Nighbert, 177 Tenn. 171, 147 S. W. (2d), 100.

This decision is one of grave public importance affecting every school teacher in the State of South Carolina. It grants to the board of education absolute powers over the teachers of the state. It gives that board the right to revoke a teacher's license without any evidence to support that action, without a hearing before a quorum of the board, and for any reason deemed by the board to be sufficient. It repeals Section 5280 and Section 5282 of the South Carolina Code, 1942, by judicial fiat. It is directly opposed to the decisions of the Supreme Court of the United States.

When petitioner's license was revoked "for good and sufficient cause," the board of education acted contrary to the decisions of this Honorable Court, contrary to the law of the Supreme Courts of the other states and in violation of the Fourteenth Amendment to the United States Constitution.

CONCLUSION

For the foregoing reasons this writ of *certiorari* should be granted.

Respectfully submitted,

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Columbia, South Carolina,

February ----------, 1951.